

State of South Dakota

SEVENTY-EIGHTH SESSION LEGISLATIVE ASSEMBLY, 2003

177I0377

HOUSE BILL NO. 1249

Introduced by: Representatives McCoy, Bartling, Bradford, Burg, Christensen, Elliott, Engels, Gassman, Gillespie, Glenski, Hargens, Hundstad, Klaudt, Kraus, Lange, LaRue, McCaulley, Miles, Nesselhuf, Olson (Mel), Olson (Ryan), Peterson (Jim), Rave, Rhoden, Sigdestad, Thompson, and Valandra and Senators Kooistra, Dennert, Duxbury, Kleven, Kloucek, Koetzle, Nachtigal, Napoli, Reedy, Sutton (Dan), and Symens

1 FOR AN ACT ENTITLED, An Act to exempt the purchase of food from sales and use taxes
2 when the provisions of the streamlined sales tax project become effective.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 There are exempted from the provisions of this chapter and the computation of the tax
7 imposed by it, the gross receipts from the sale of food.

8 Section 2. That § 10-45-1 be amended by adding thereto a NEW SUBDIVISION to read as
9 follows:

10 "Food," and "food ingredient," any substance, whether in liquid, concentrated, solid, frozen,
11 dried, or dehydrated form, that is sold for ingestion or chewing by humans and is consumed for
12 its taste or nutritional value. The term, food, does not include alcoholic beverages, tobacco, soft
13 drinks, candy, or prepared food.



1 Section 3. That § 10-45-1 be amended by adding thereto a NEW SUBDIVISION to read as
2 follows:

3 "Soft drinks," any nonalcoholic beverages that contain natural or artificial sweeteners. The
4 term, soft drinks, does not include any beverage that contains milk or milk products, soy, rice
5 or similar milk substitutes, or greater than fifty percent of vegetable or fruit juice by volume.

6 Section 4. That § 10-45-1 be amended by adding thereto a NEW SUBDIVISION to read as
7 follows:

8 "Candy," any a preparation of sugar, honey, or other natural or artificial sweeteners in
9 combination with chocolate, fruits, nuts or other ingredients or flavorings in the form of bars,
10 drops, or pieces. The term, candy, does not include any preparation containing flour and does
11 not require refrigeration.

12 Section 5. That § 10-45-1 be amended by adding thereto a NEW SUBDIVISION to read as
13 follows:

14 "Prepared food" any:

15 (a) Food sold in a heated state or heated by the seller;

16 (b) Two or more food ingredients mixed or combined by the seller for sale as a single
17 item. The term, prepared food, in this subsection does not include food that is only
18 cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods
19 containing these raw animal foods requiring cooking by the consumer as
20 recommended by the Food and Drug Administration in chapter 3, part 401.11 of its
21 Food Code as of January 1, 2003, so as to prevent food borne illnesses; or

22 (c) Food sold with eating utensils provided by the seller, including plates, knives, forks,
23 spoons, glasses, cups, napkins, or straws. A plate does not include a container or
24 packaging used to transport the food.

1 Section 6. That chapter 10-46 be amended by adding thereto a NEW SECTION to read as
2 follows:

3 There are exempted from the provisions of this chapter and the computation of the tax
4 imposed by it, the gross receipts from the sale of food.

5 Section 7. That § 10-46-1 be amended by adding thereto a NEW SUBDIVISION to read as
6 follows:

7 "Food," and "food ingredient," any substance, whether in liquid, concentrated, solid, frozen,
8 dried, or dehydrated form, that is sold for ingestion or chewing by humans and is consumed for
9 its taste or nutritional value. The term, food, does not include alcoholic beverages, tobacco, soft
10 drinks, candy, or prepared food.

11 Section 8. That § 10-46-1 be amended by adding thereto a NEW SUBDIVISION to read as
12 follows:

13 "Soft drinks," any nonalcoholic beverages that contain natural or artificial sweeteners. The
14 term, soft drinks, does not include any beverage that contains milk or milk products, soy, rice
15 or similar milk substitutes, or greater than fifty percent of vegetable or fruit juice by volume.

16 Section 9. That § 10-46-1 be amended by adding thereto a NEW SUBDIVISION to read as
17 follows:

18 "Candy," any a preparation of sugar, honey, or other natural or artificial sweeteners in
19 combination with chocolate, fruits, nuts or other ingredients or flavorings in the form of bars,
20 drops, or pieces. The term, candy, does not include any preparation containing flour and does
21 not require refrigeration.

22 Section 10. That § 10-46-1 be amended by adding thereto a NEW SUBDIVISION to read
23 as follows:

24 "Prepared food" any:

- 1 (a) Food sold in a heated state or heated by the seller;
- 2 (b) Two or more food ingredients mixed or combined by the seller for sale as a single
- 3 item. The term, prepared food, in this subsection does not include food that is only
- 4 cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods
- 5 containing these raw animal foods requiring cooking by the consumer as
- 6 recommended by the Food and Drug Administration in chapter 3, part 401.11 of its
- 7 Food Code as of January 1, 2003, so as to prevent food borne illnesses; or
- 8 (c) Food sold with eating utensils provided by the seller, including plates, knives, forks,
- 9 spoons, glasses, cups, napkins, or straws. A plate does not include a container or
- 10 packaging used to transport the food.
- 11 Section 11. This Act is effective on July 1, 2006.